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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,186	09/21/2007	Rudolf Brenneisen	8588-US	3801

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EXAMINER	
HA, JULIE	

ART UNIT	PAPER NUMBER
1654	

NOTIFICATION DATE	DELIVERY MODE
02/04/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/580,186	BRENNEISEN ET AL.	
	Examiner	Art Unit	
	JULIE HA	1654	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *10,12-24,26-28,38-40 and 45-47*.
   Claim(s) withdrawn from consideration: *1-9,29-33,36,37 and 41-44*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see continuation of 11 below.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Julie Ha/
Primary Examiner, Art Unit 1654

Continuation of 11:

Claims 10, 12-24, 26-28, 38-40 and 45-47 remain rejected under 35 U.S.C. 102(b) as being anticipated by Muhlbauer (WO 98/50054) as being evidenced by Kuttan et al (Biochemistry, 1974, 13(21): 4394-4400) and as evidenced by Wetli et al (J. Agric. Food Chem., 2005, 53(9): 3408-3414), as set forth in the previous office action.

Applicant argues that "Independent claims 10 and 24 recite, in part, nutritional and pharmaceutical compositions, respectively, comprising a g-glutamyl-peptide selected from the group consisting of g-glutamyl-alkyl-cysteine sulfoxide, g-glutamyl-alkenyl-cysteine sulfoxide, and combinations thereof, a carrier and a fat source. Independent claim 29 recites, in part, a method of obtaining a g-L-glutamyl-trans-S-1-propenyl-L-cysteine sulfoxide by fractionaation of an hydrophilic ethanolic extract of Allium..." Applicant argues that "Applicant has surprisingly found that the active constituent of allium responsible for the bone resorption inhibiting effect may be found in a hydropholic, ethanolic extract of allium such as allium cepa." Applicant argues that "Muhlbauer fails to disclose or suggest nutritional and pharmaceutical compositions, respectively, comprising a g-glutamyl-peptide selected from the group consisting of g-glutamyl-alkyl-cysteine sulfoxide, g-glutamyl-alkenyl-cysteine sulfoxide, and combinations thereof, a carrier and a fat source." Applicant further argues that "Kuttan and Wetli fail to disclose or suggest nutrional and pharmaceutical compositions, respectively, comprising a g-glutamyl-peptide selected from the group consisting of g-glutamyl-alkyl-cysteine sulfoxide, g-glutamyl-alkenyl-cysteine sulfoxide, and combinations thereof, a carrier and a fat source.

Applicant's arguments have been fully considered but have not been found persuasive. Muhlbauer reference teaches that the nutritional or pharmaceutical compositions containing a plant extract or concentrate selected from the group consisting of allium, eruca, petroselinum and brassica extracts or concentrates.Muhlbauer further teaches that the composition is useful for the treatment of diseases or conditions which are characterized by increased bone resorption, osteoporosis. The reference teaches that the term allium refers to the genus allium and includes any member of the botanical spceis Allium cepa (onion), Allium ascalonium and so on. The reference teaches that the concentrate or plant extract is obtained by extracting the fresh cut or dried plants or vegetables or the respective roots, fruits, seeds thereof with water or with one or more food grade solvents or with a mixture of water and one or more food grade solvents, ethanol. Example 4 at page 16 explicitly teaches ethanol/water extraction. The instant specification discloses that "The active constituent of allium responsivle for the bone resorption inhibiting effect, may be found in an hydrophilic, ethanolic extract of allium such as Allium cepa" (see paragraph [0012]). Muhlbauer reference further teaches that the nutritional composition comprise at least one (a) plant/extract or concentrate from allium, (b) a calcium source, and (c) at least one energy source selected from carbohydrate, fat and nitrogen sources, and Vitamin C. Both Kuttan and Wetli references were provided as evidence to show that g-glutamyl peptide is isolated from Allium cepa. Kuttan et al teach that g-glutamyl-S-(trans-l-propenyl)-L-cysteine sulfoxide isolated from sandal (Santalum album L.) and that is the same as the protein isolated from onion (Allium cepa).
In regards to Applicant's argument regarding claim 29 (claims 29-33, 36-37, 41-44), these claims are drawn to the method claims. These claims have been withdrawn from further consideration, as being drawn to nonelected inventions. Therefore, these claims were not under examination, and thus, the argument is moot.